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Court : Patna

Decided On : Aug-16-2000

Judge : P.K. Deb, J.

Appeal No. : M.A. Nos. 543, 552 and 553 of 1999

Appellant : Ashok Kumar Singh and ors.

Respondent : Mohan Singh and ors.

Judgement :

P.K. Deb, J.

1. All these appeals have been heard analogously as they arise out of the common judgment and award passed by the 2nd Additional District Judge-cum-Motor Accidents Claims Tribunal, Muzaffarpur in Claim Case Nos. 92, 93 and 94 of 1993.

2. All the above mentioned three claim cases have arisen out of the same accident which had taken place on 24.6.1993 on National Highway No. 28 near Panapur Chowk, District Muzaffarpur due to alleged dashing of bus bearing registration No. BR-06A-6751 with Maruti van bearing registration No. BPQ 6131 in which the applicants Amit Kumar Singh (Claim Case No. 92 of 1993), Ashok Kumar Singh, Abha Singh, Akamsha Singh, Anubha Singh and Ramesh Kumar Thakur (Claim Case No. 93 of 1993) sustained injuries and deceased Shakuntala Singh

sustained grievous injuries and succumbed to injuries. The injured persons are the claimants in the two claim cases as mentioned above and the heirs of Shakuntala Singh had preferred the other claim case.

3. The case of the claimants is that deceased Shakuntala Singh along with her minor son Amit Kumar Singh aged about 1272 years and other relatives Ashok Kumar Singh, his wife Abha Singh and their minor daughters, namely, Anubha Singh and Akamsha Singh were travelling in the Maruti van as mentioned above going to Motihari from Patna. Driver Ramesh Kumar Thakur was driving the Maruti van when he reached near Panapur in between Muzaffarpur and Motihari on National Highway No. 28, the offending bus as mentioned above being rashly and negligently driven came from the opposite direction, dashed the same Maruti van causing top side down of the van and seriously injuring the deceased and other persons in the Maruti van. It was further alleged that the offending bus was driven in reckless way and although driver took Maruti to his extreme left and blew horn but the bus dashed against Maruti van with high speed resulting in the death of Shakuntala Singh almost instantly and injuries to the other occupants. Minapur P.S. Case No. 60 of 1993 was instituted and police submitted charge-sheet under Section 304A of the Indian Penal Code read with other sections against the driver of the bus. Oriental Insurance Co. Ltd. was the insurer of the bus while Shailendra Kumar Singh was its owner. The insurer, owner and the driver all were made opposite parties in the three claim cases. All the three claim cases were tried together and separate written statements were filed by the insurance company alone. Usual defences were taken by the insurance company in its written statements together with a pleading that it is a case of contributory negligence and when the owner, driver and the insurance company of Maruti van were not made parties the claim petitions were fit to be rejected. Both parties adduced evidence and on consideration of the evidence on record the Tribunal found that it was the bus alone which was responsible for negligence in occurrence of the accident and hence as the insurance company had coverage of the vehicle at the relevant period the insurance company alone was held liable to pay compensation in all the cases. In the case of compensation for injuries sustained and for mental agony, shock, etc., the learned Tribunal has granted Rs. 3,000 each to all the injured persons as no documents could be proved or filed for and on behalf of the injured

regarding their loss of profession. Some medical prescriptions were filed which showed only meagre and minor injuries and in that way compensation has been assessed to the extent of Rs. 3,000 per head to the injured persons. Regarding deceased Shakuntala Singh compensation has been assessed to the tune of Rs. 4,18,000 with interest at the rate of 10 per cent per annum from the date of the application till its realisation.

4. In these appeals the quantum of compensation has been challenged by the claimants. It is the contention of learned counsel for the appellants that the Tribunal committed error in properly assessing the loss of dependency of the claimants, in respect of deceased Shakuntala Singh and in respect of injured persons it is submitted Rs. 3,000 towards compensation each was so meagre that the same would not compensate the injured persons, in any way whatsoever.

5. As regards Shakuntala Singh, it is submitted that all documents were filed before the court below as to what salary she was getting at the time of incident and how she was already being ordered to be promoted to the gazetted rank in higher post and assessment of income was wrongly being calculated. In that way several judgments of the Supreme Court and that of the other High Courts have been referred to. It is true that at the time of the accident the deceased was earning a salary of Rs. 5,285.50 and the same was taken to be the basis for assessment of loss of dependency. She was aged 43 years at that time and long 15 years had been left in her service career. There was already an order for her promotion to the gazetted rank in the higher pay scale. Although such assessment was not made considering the future promotional avenues and the prospects, etc., but in my view at least Rs. 6,000 ought to have been construed to be her income considering the promotional avenues, etc., for the purpose of assessment of loss of dependency, deducting 73rd of the same towards the personal expenses Rs. 4,000 comes up to be the monthly dependency for the claimants and the yearly dependency comes to Rs. 4,000 x 12 = Rs. 48,000. For the purpose of user of multiplier, the cardinal principle is that the same should be applied in such a way that the compensation assessed if retained in a nationalised bank or financial institution in fixed deposit the amount of interest coming monthly should be commensurate with the loss of dependency of the claimants. In that way if the

multiplier of 10 is used as was done by the Tribunal the amount comes to Rs. 4,80,000 and deducting Rs. 50,000 which was awarded towards interim compensation the amount comes up to Rs. 4,30,000 and if the same is kept in nationalised bank or a financial institution the dependency comes to Rs. 4,300 per month which would be construed as proper and just even after consideration of promotional avenues, etc., and the increase of the income of the deceased in her future service career. Thus, the amount of compensation is assessed at Rs. 4,80,000 in place of Rs. 4,18,000 as awarded by the learned court below. The amount so assessed must get interest at the rate of 10 per cent per annum which would definitely increase the quantum of compensation and would further commensurate with the future prospect of the service or career of the deceased.

6. In respect of the compensation awarded to the injured claimants, I am also of the view that only lump sum amount can be granted but Rs. 3,000 as assessed by the learned court below is too meagre considering the mental shock, agony and sufferance from the injuries sustained. In my view, Rs. 5,000 each would be the proper compensation for the injured claimants.

7. The appeals are thus partly allowed with the modification of the amounts of compensation assessed by the Tribunal as mentioned above.

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